

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

CR 15-0123 KG

ANDRES GARCIA-DAMIAN,

Defendant.

ORDER

The matter comes before the Court in a letter, Doc. 38, from the defendant in which he explains his desire to appeal. It should be noted that the defendant was sentenced by this Court on September 29, 2015, to a term of 46 months imprisonment. He explains that although he told his attorney that he wanted to appeal, a Notice of Appeal was not filed by the 14-day deadline. Fed. R. Crim. P. 4(b)(1)(A). He now asks this Court "to please give [him] an opportunity to appeal, and if it is possible to speak with an attorney about my case." Doc. 38.

The Court held a hearing on the defendant's request, including previously-retained defense counsel and the Assistant United States Attorney. Also present at the Court's request was the Assistant Federal Public Defender. The Court requested positions from the AUSA and AFPD on whether the Court had jurisdiction to entertain the defendant's request as either a Notice of Appeal or a motion to extend the deadline to file a Notice of Appeal. At the Court's request, the AFPD readily agreed to provide counsel to the defendant regarding the contents of the letter.

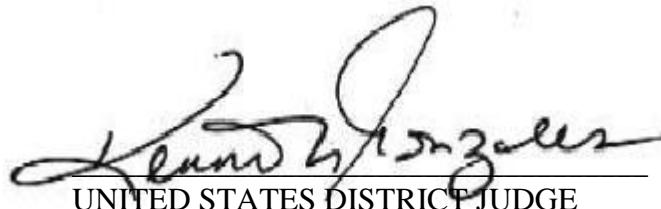
Both the AUSA and AFPD submitted letters to the Court. (Docs. 44 and 45). After reviewing the defendant's letter, considering the comments and applicable rules, the Court finds

the letter does not meet the minimum requirements for a Notice of Appeal. *See* Fed. R. App. P. 3(c)(1) (specifying minimum contents for Notice of Appeal). As a result, the Court cannot construe the letter as such.

Additionally, to the extent the Court may construe the letter as a motion to extend the deadline to file a Notice of Appeal, the Court no longer has jurisdiction to extend the deadline. Specifically, as both counsel have recognized, the Judgment was filed on September 29, 2015. Accordingly, the Notice of Appeal should have been filed within fourteen days; no later than October 13, 2015. Fed. R. App. P. 4(b)(1). The defendant's letter is dated November 11, 2015, and was mailed November 12, 2015. The 30-day extension period expired the same day; November 12, 2015. Fed. R. App. P. 4(a)(5) (providing court "may--before or after the time has expired, with or without motion and notice--extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule"). That is, even if the Court granted an extension at an earlier stage, it could not have extended the deadline beyond November 12, 2015. As a result, the Court no longer has jurisdiction to extend the deadline to file a Notice of Appeal.

The Court appreciates the AFPD's willingness to provide short-notice counsel to the defendant and for his and the AUSAs comments on the foregoing questions.

Accordingly, the defendant's request for an opportunity to appeal is DENIED, and, to the extent his letter can be construed as a motion to extend the deadline to file a Notice of Appeal, it is DENIED for lack of jurisdiction.



UNITED STATES DISTRICT JUDGE